In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1319

FRANK E. HADDAD, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We invite the Court's attention to the following facts which indicate that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on December 10, 1975 (Pet. App. A) and no petition for rehearing was filed. The 90-day period under 28 U.S.C. 2101(c) within which a petition for a writ of certiorari in a civil case must be filed expired on March 9, 1976, and the time for filing the petition was not extended. The petition was not filed until March 15, 1976. Since the time limit specified by 28 U.S.C. 2101(c) is

jurisdictional, the petition for a writ of certiorari should be denied.[1]

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

APRIL 1976.

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[1]On March 2, 1976, the court of appeals entered an order staying the mandate for 30 days and providing that if a petition for a writ of certiorari was filed within that 30-day period, the stay would continue in effect until this Court disposed of the case (Pet. App. E). Contrary to petitioner's apparent belief that his petition is timely because filed within that 30-day period (Pet. 2), the court of appeals' order did not and could not extend the time for filing the petition.

DOJ-1976-04